

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5041 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHANU KALU TAHADE

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/07/2000

ORAL JUDGEMENT

Present petitioner has been detained by the order dated 29-1-2000 and has been sent to District Jail, Surat declaring him as a dangerous person. From the jail, he has sent one application dated 28-4-2000 through Superintendent, District Jail, Surat to Registrar, High Court of Gujarat and same was numbered as Special Civil Application No.5041 of 2000 and was placed before the Court taking up urgent matters during vacation. The

Court (Coram: K.M.Mehta, J.) vide order dated 25-2-2000 has requested Mr.H.R.Prajapati to appear on behalf of the petitioner as amicus curie and Mr.Prajapati has consented to the same. Thereafter, this matter has come up before this Court.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression 'public order'. A distinction has to be drawn between the 'law and order' and 'maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard Mr.Prajapati, learned advocate on behalf of the petitioner and Mr.S.J.Dave, learned AGP on behalf of the State. According to Mr.Prajapati, statements of two independent witnesses whose identity has not been disclosed have been recorded on 25-1-2000 and 26-1-2000 respectively and both the statements have been verified on 29-1-2000. It is further submitted that order of detention has been passed on the day on which the statements have been verified, i.e. on 29-1-2000. Learned APP, Mr.S.J.Dave has fairly admitted the same. It has been held in a judgment reported in 1993 (2) G.L.R. 1659 in the case of Kalidas Chandubhai Kahar Vs. State of Gujarat and Ors. more particularly at para 6 as under:

"At the time of exercising the privilege under Sec.9(2) of PASA, a balance is required to be struck between the public interest on the one hand and the right of the detenu to make a representation under Art.22(5) of the Constitution on the other. If the statements of the witnesses are to be relied on, they must be genuine statements of the real persons. The detenu would like to verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or

not ? Unless the detenu knows the names and addresses of the persons who have given the statements, he cannot verify the aforesaid facts and if the names and addresses along with the contents of the statements are supplied to the detenu, he can have full opportunity to verify the position and make an effective representation on that basis. As against this, there is a provision under sec.9(2) carved out on the basis of Art.22(5) of the Constitution which provides that nothing in sub-sec. (1) shall require the authority making such order to disclose facts which it considers to be against the public interest to disclose. Therefore, it is the duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle formality as it affects the public interest on the one hand and the right of the detenu on the other (para 6)".

4. In the instant case, statements of the witnesses have been recorded on 25-1-2000 and 26-1-2000 and verification of the same has been done on 29-1-2000. It is to be noted that order of detention has also been passed on 29-1-2000 and, therefore, right of making an effective representation by the detenu under Sec.22(5) has been affected. Therefore, order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 29-1-2000 passed against the detenu is hereby quashed and set aside. The detenu-Bhanu Kalu Tahade is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA, J.)
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